IN THE HIGH COURT OF JUDICATURE FOR RAJ.
AT JAIPUR BENCH, JAIPUR.

**O R D E R**

**IN**

(1) S.B.C.W.NO.4285/2004
Naveen Mathur Vs.State of Raj. & others,
(2) S.B.C.W. No.4772/2004,
IndraSingh SolankiVs.StateofRaj.& Others,
(3) S.B.C.W. No.7648/2004
Bharat Singh Chouhan Vs. R.S.R.T.C., Jaipur,
(4) S.B.C.W.NO. 5366/2005
Mohd.Sharif Vs. State of Raj.and another,
(5) S.B.C.W. No. 5392/2002,
ShankerLal Meghwanshi Vs.RSRTC, & others
(6) S.B.C.W. No.1374/2002,
Dhirendra Singh State and another ,
(7) S.B.C.W. No.. 2412/2006,
BhuvneshKumarVs.Regional Institute of Education
(8) S.B.C.W. No. 518/1999,
Nand Bhanwar Singh Vs. State ,
(9) S.B.C.W. No..1256/1995,
Prem Kumar Pareek Vs. State,
(10) S.B.C.W. No.4712/1996
Prakash Paliwal Vs. State and others ,
(11) S.B.C.W. No.. 2567/2000
Puneet Bharat Sharma Vs. State,
(12) S.B.C.W. No.3090/2000,
Virendra KumarAjmeraVs.R.S.R.T.C.Jaipur & others
(13) S.B.C.W. No. 2027/2000,
Ghanshyam Saini Vs. State and others ,
(14) S.B.C.W. No.1404/1999,

Smt.BhanwariDeviVs.The State of Raj.
(15)S.B.C.W. No. 8222/2005 ,
Man Singh YadavVs.The Chairman Cum Managing Director ,
(16)S.B.C.W. No.1422/2005,
Nipendra Singh Vs.The Chairman Cum Managing Director
(17)S.B.C.W. No.5285/2004
Manoj KumaR Sharma Vs. State of Raj.&others,
(18)S.B.C.W. No. 3345/2004,
Om Prakash Saini Vs. State of Rajasthan ,
(19)S.B.C.W. No.. 4098/1999,
Smt. Munni Devi Vs. State and others,
(20 S.B.C.W. No..112/2000,
Vishram Gurjar Vs. State and others ,
(21)S.B.C.W. No. 673/2001,
Narayan Singh Chauhan Vs.State& others,
(22 S.B.C.W. No. 3709/2001 ,
Dinesh Kumar Mathur Vs. State and others
(23)S.B.C.W. No. 690/2001
Abdul Gani Khan Vs. State and others ,
(24)S.B.C.W. No. 9604/02,
Mithlesh& another Vs.StateofRaj.& others,
(25)S.B.C.W. No. 4072/1999,
Mukesh Singh Vs. State,
(26)S.B.C.W. No. 4464/1999,
Ramesh Chand Vs. State and another ,
(27)S.B.C.W. No. 2000/2000,
Deependra Chamunia vs. State and others,
(28)S.B.C.W. No. 4847/2002,
MohammadAkram & ant.Vs.State of Raj.&ant.
(29)S.B.C.W. No.. 5891/02,
Ramesh Chand Vs. State,
(30)S.B.C.W. No.1702/04,
Jitendra Singh Vs.TheSecretary,Govt.of Rajasthan
(31)S.B.C.W. No.7016/05,
Satya Narain Vs. State of Rajasthan,

(32)S.B.C.W. No. 3837/95
VinodKumarGupta Vs.State of Raj.& others,
(33)S.B.C.W. No. 6552/98
Inder Kumar Vs. State and others,
(34)S.B.C.W. No. 38/99
Pawan Kumar Gupta Vs. State,
(35)S.B.C.W. No.. 949/99
Ramesh Kumar Vs. State and others,
(36)S.B.C.W. No.. 2538/2000
Shailendra Kumar Vs. State and others,
(37)S.B.C.W. No.. 4581/2000
Vinod Kumar Vs. State and others ,
(38)S.B.C.W. No. 4560/2002,
Shri Rais Khan Vs. State and others,
(39)S.B.C.W. No. 7432/02
Nand Kishore Vs. State of Rajasthan,

(40)S.B.C.W. No. 9278/02
Chhatu Singh Vs. State and others ,
(41)S.B.C.W. No. 2549/03
Viaks Shara Vs. State of Raj.
(42)S.B.C.W. No.3437/04
Smt.NarmadaDevi&ant Vs. The Director
EmploymentService,
(43)S.B.C.W. No. 3608/04
Arjuna Singh Vs. J.V.V.N.LTD. and others,
(44)S.B.C.W. No. 5874/05
Shyam Singh Shekhawat Vs.State of Raj. &
others,
(45)S.B.C.W. No.. 6554/05
Rajendra Kumar Vs. R.S.R.T.C.
(46)S.B.C.W. No. 8696/05,
MAYAK SHARMA VS. STAT OF RAJ & ORS
&
(47) S.B.C.W. No. 4934/06
KAPIL DEV VS. R.S.R.T.C.

**DATE OF ORDER;- DECEMBER 2006,**

**P R E S E N T**

**HON'BLE MR. JUSTICE R.C. GANDHI.**

Serva Shri S.K.Saxena, Mr. Praveen Jain, Virendra Lodha, Ali Mohd. Khan,Sanjay Pareek, Dr. Y.C.Sharma,N.R.Choudhary,Rakesh Bhargava, M.M. Mehrishi, Sunil Samdariya, R.P.Vijay, Dinesh Yadav,Mahesh Gupta,S.K.Gupta, M.L. Goyal,Rajesh Mootha,Sanjay Tyagi, Rajveer Sharma,R.C.Joshi,S.K.Jain,D.S.Jaduon, Bhanwar Bagdi, Manoj Pareek, J.P.Goyal, D.V.Tholia,Manu Bhargava, Miss Manju Garg, Ganesh Meena,Ranvir Singh, M.F.Baig, Vipul Jaimen, Devendra Raghaw, S.R.Yadav, Sanjay Mehrishi, Vikrant Gupta, B.L.Gupta, H.C. Jain, S.K. Singodiya, R.D.Rastogi, J.M.Saxena, for the petitioners,

Serva Shri S.N. Gupta, G.S.Fauzdar, Manish Bhandari, Anil Sharma ,Kapil Mathur,Miss Naina Saraf, M.R. Naredi,Mr. R.P. Singh,J.K. Singhi, Shailash Prakash Sharma, Mr. J.K.Agarwal, for the respondents, Mr. H.V.Nandwana, Dy.Govt. Advocate for the State,

All these petitions have been presented seeking direction to the respondents for compassionate appointment being cause of action

available under the Rajasthan Compassionate Appointment of Dependants of Deceased Government Servant Rules, 1996 (hereinafter referred to as ('the Rules of 1996'). All these petitions contain similar and common facts and law are being disposed of by this common order.

The petitioners are seeking compassionate appointment being dependant on the deceased employee. They were minor at the time of death of the deceased government servant. There are few petitioners who seek compassionate appointment being adopted son of the deceased. The petitioners being minor at the time of death of deceased, could not file applications for seeking appointment being not eligible. On attaining the age of majority, each of them filed application seeking compassionate appointment. In some of the cases, their applications have been rejected considering

under the Rules of 1996 and in some of the cases, no orders have been passed by the respondents on their applications.

(i) In Writ Petition No.4285/2004 Naveen Mathur Vs. State of Rajasthan and others, the employee died on 31.07.1995. The petitioner was born on 08.11.1983. The application for seeking compassionate appointment was filed on 28.11.2001. The application has been rejected on the ground that the mother of the petitioner is in employment.

(ii) In Writ Petition No.4772/2004, Indra Singh Solanki Vs. State of Rajasthan and Others, the application has been rejected on the same ground that the mother of the petitioner is in employment.

(iii) In Writ Petition No.7648/2004 Bharat Singh Chouhan Vs.R.S.R.T.C.,Jaipur,the father of the petitioner died on 19.01.1989. At that

time the petitioner was of 4 years age being born on 15.09.1984. The application was filed on 18.10.2002 and has been rejected being not filed within reasonable time.

(iv) In Writ Petition No. 5366/2005 Mohd. Sharif Vs. State of Rajasthan and another, the employee died on 17.10.1994 and the petitioner was born on 1.6.1981 . At the time of the death of his father, the petitioner was 13 years of age. On attaining majority,the petitioner filed an application on 16.05.1999, which has been rejected being filed belatedly.

(v) In Writ Petition No. 5392/2002, Shanker Lal Meghwanshi Vs. RSRTC,and others the father of the petitioner died on 14.08.1996 . The petitioner was born on 22.06.1982. He filed an application on 29.05.2002 for compassionate appointment. His application was rejected as his father has served only for 180 days.

(vi)In Writ Petition No. 1374/2002, Dhirendra Singh Vs. State and others,the employee died on 4.6.1981. At the time of death , the petitioner was 4 years of age. He filed an application for compassionate appointment on 29.1.1998 which was rejected being filed belatedly.

(vii)In Writ Petition No. 2412/2006, Bhuvnesh Kumar Vs. Regional Institute of Education and another, the petitioner filed an application for compassionate appointment being adopted son of the deceased who died on 7.4.1994. He was adopted on 5.3.1994 and at the time of adoption, he was 20 years of age.

(viii)In Writ Petition No. 518/1999,Nand Bhanwar Singh Vs.State of Rajasthan and Others,the employee died on 10.02.1991. The petitioner was adopted on 23.04.1991. The petitioner was 13 years of age. The application

was filed in the year 1996. The application was rejected on the ground that he was not dependant as being adopted after the death of the deceased employee.

(ix)In Writ Petition No.1256/1995, Prem Kumar Pareek Vs. State, the widow of the deceased has adopted his younger brother as his son. The deceased employee died on 15.06.1975 and the petitioner was adopted on 17.8.1992.

(x) In Writ Petition No.4712/1996 Prakash Paliwal Vs. State and others ,the employee died on 19.04.1995 . The petitioner was adopted on 4.2.1995 at the age of 23 years. His application was rejected being filed belatedly.

(xi)In Writ Petition No. 2567/2000 Puneet Bharat Sharma Vs. State, the deceased employee died on 14.11.1993. The petitioner was born on 7.8.1983 . The application was filed on 4.10.1999 which is still pending.

(xii) In Writ Petition No.3090/2000, Virendra Kumar Ajmera Vs. R.S.R.T.C.and another, the employee died on 07.08.1988. The petitioner was born in the year 1976 and at the time of death of his father,he was of 12 years age. He filed an application on 6.5.1995 for the post of Lower Division Clerk. The petitioner has been engaged as Conductor on daily wages basis. He being possessed the eligibility qualification for the post of L.D.C. seeks his compassionate appointment as L.D.C.

(xiii) In Writ Petition No. 2027/2000, Ghanshyam Saini Vs. State and others ,the employee died on 06.02.1996. The petitioner was born on 19.09.1978. He filed an application on 5.6.1996 which has been rejected on the ground that his both brothers are in service.

(xiv)In Writ Petition No. 1404/1999, Smt. Bhanwari Devi Vs. The State of Rajasthan , the

employee died on 6.6.1997. The petitioner was born on 10.1.1981. The application was filed on 14.07.1997 which was rejected on 20.11.1997 vide Ex. 10 as the petitioner was only 16 years and 10 months.

(xv)In Writ Petition No. 8222/2005,Ram Singh Yadav Vs. The Chairman Cum Managing Director,R.S.R.T.C., the deceased employee died on 8.8.1991. The petitioner was born on 15.8.1983. He filed an application on 15.8.2001. The respondents have rejected application being filed belatedly.

(xvi) In Writ Petition No. 1422/2005, Nipendra Singh Vs. The Chairman Cum Managing Director,R.S.R.T.C., the application of the petitioner has been rejected on the same ground being filed belatedly.

(xvii) In Writ Petition No. 5285/2004 Manoj Kumar Sharma Vs. State of Rajasthan and others,

the deceased employee died on 8.8.1994. The petitioner was born on 12.8.1976. The application was filed on 7.1.1998 which was rejected on the ground that the post is not vacant.

(xviii)In Writ Petition No. 3345/2004,Om Prakash Saini Vs. State of Rajasthan ,the employee died on 16.09.1983. The petitioner was born on 3.7.1983. He filed an application on 21.07.2001 which was rejected being filed belatedly.

(xix) In Writ Petition No. 4098/1999, Smt. Munni Devi Vs. State and others, the deceased employee died on 5.7.1996. The widow of the deceased filed an application on 23.07.1996 while the applicant was minor. On attaining the age of majority, the petitioner filed an application which was rejected on 26.10.1998

being not filed within 45 days in terms of the rules of 1996.

(xx) In Writ Petition No.112/2000, Vishram Gurjar Vs. State and others , the deceased employee died on 24.08.1996. The petitioner was born on 5.7.1979. The mother of the petitioner applied for compassionate appointment on 26.09.1996. The application was rejected as it will be considered after the post is available. The petitioner applied again. Her application was rejected being filed belatedly.

(xxi) In Writ Petition No. 673/2001, Narayan Singh Chauhan Vs. State and others, the deceased employee died on 7.12.1985. At the time of death, the petitioner was 4 years of age. He filed an application on 19.4.2000 which has been rejected on the ground that it has been filed belatedly.

(xxii) In Writ Petition NO. 3709/2001 , Dinesh Kumar Mathur Vs. State and others , the employee died on 19.04.1989. The petitioner was born in the year 1981. He filed an application for compassionate appointment on 15.6.1998 which is still pending.

(xxiii) In Writ Petition No. 690/2001 Abdul Gani Khan Vs. State and others , the deceased employee died on 3.8.1975. At that time, petitioner was 12 years of age. An application for compassionate appointment was filed on 6.8.1975 and in the year 1984 also on attaining the age of majority. His application was rejected on 24.4.2000 on the ground that his one brother is in employment.

(xxiv) In Writ Petition No. 9604/04, Mithlesh and another Vs. State of Rajasthan and others, the husband of the petitioner Ashok Singh died on 26.9.1993. His dependent son was born

on 14.7.1981. He filed an application on attaining majority. His application has not been decided.

(xxv) In Writ Petition No. 4072/1999, Mukesh Singh Vs. State, father of the petitioner died on 26.2.1980 . At that time, petitioner was 19 years of age. He filed two applications for compassionate appointment on 30.12.1997 and 10.3.1997, which were rejected on 4.2.1998 on account of amendment of New Rules and being belatedly filed.

(xxvi) In Writ Petition No. 4464/1999, Ramesh Chand Vs. State and another , father of the petitioner died on 5.3.1996. At that time petitioner was 18 years of age. He filed an application for compassionate appointment on 11.3.1996, which was rejected on the ground of delay and the petitioner was not qualified for the post.

(xxvii) In Writ Petition No. 2000/2000, Deependra Chamunia Vs. State and others, employee died on 3.12.1996. At that time the petitioner was 17 years of age. He moved an application on 12.1.1998. His application was dismissed on 13.4.1999 on the ground that his mother is already in employment.

(xxviii)In Writ Petition No. 4847/2002, Mohammad Akram and another Vs. State of Rajasthan and another , deceased employee passed away on 6.9.96 leaving behind his son who was 14 years of age. His son moved an application for compassionate appointment on 12.11.01, which was rejected on 23.3.02 on account of delay in filing the application.

(xx ix) In Writ Petition No. 5891/02, Ramesh Chand Vs. State, father of the petitioner died on 11.6.96. At that time the petitioner was 17 years of age. He filed an application for

compassionate appointment on 13.9.1998, which was rejected on 12.10.1998 on the ground that it was filed beyond limitation.

(xxx) In Writ Petition No. 1702/04, Jitendra Singh Vs. The Secretary, Govt. of Rajasthan , father of the petitioner passed away on 19.1.1985, leaving behind two sons who were 15 and 18 years of the age. Appointment was denied on the ground that one member is already in Government service.

(xxxi) In Writ Petition No. 7016/05, Satya Narain Vs. State of Rajasthan and another,the employee died on 27.3.1972. The petitioner moved an application for compassionate appointment on 16.7.04, which was rejected on 30.11.2004, on the ground that his date of birth was wrongly mentioned.

(xxxii) In Writ Petition No. 3837/95 Vinod Kumar Gupta Vs.State of Rajasthan and others,

father of the petitioner died on 26.6.92 leaving behind his 16 years adopted son, who moved an application for compassionate appointment on 24.9.1992, which was dismissed on 18.10.1993, on the ground that the applicant was not real son.

(xxxiii)In Writ Petition No. 6552/98 Inder Kumar Vs. State and others, the father of the petitioner died on 15.7.1982, leaving behind his seven years old son, who moved an application for compassionate appointment on 6.10.1993, which was rejected on 6.9.1996, on the ground that he was not eligible for appointment as per Govt. Order No. 1(3) Finance/Exp./3/92/ dated 20.9.1995.

(xxxiv) In Writ Petition No. 38/99 Pawan Kumar Gupta Vs. State, , father of the petitioner died on 25.9.1980, leaving behind his two months son, who applied for compassionate

appointment on 10.9.1998 on attaining the age of majority. His application was rejected on 2.11.1998, being not applied within 45 days after the death of deceased employee.

(xxxv) In Writ Petition No. 949/99 Ramesh Kumar Vs. State and others, the deceased employee died on 23.11.1992, leaving behind him 12 years old son, who applied for compassionate appointment in the year 1997 , on attaining majority , which was rejected on 1.6.1998 the ground of belatedly filed.

(xxxvi) In Writ Petition No. 2538/2000 Shailendra Kumar Vs. State and others, the employee died on 7.3.1996, leaving behind his wife and 15 years old son. His wife applied for compassionate appointment on 23.3.1996 which was rejected on 18.9.1998 on the ground of expiry of limitation period.

(xxxvii)In Writ Petition No. 4581/2000 Vinod Kumar Vs. State and others , the father of the petitioner died on 22.11.1995. The age of the petitioner at that time was 15 years. He applied for compassionate appointment on 17.9.1996. His application was rejected on 8.9.1998 on the ground of being belatedly filed and his elder brother is already employed in the department.

(xxxviii) In Writ Petition No. 4560/2002, Shri Rais Khan Vs. State and others, the father of the petitioner died on 31.12.1981. At that time the petitioner was minor. An application for compassionate appointment was filed on 2.1.1997, after sixteen years and was rejected.

(xxxix) In Writ Petition No.5575/02 Bheem Singh Vs. State of Rajasthan and others, the employee passed away on 8.10.1992, leaving

behind his son of the age of nine and half years,who applied for compassionate appointment after attaining the age of majority. His application was rejected on the ground that it was filed after expiry of time.

(lx) In Writ Petition No. 7432/02 Nand Kishore Vs. State of Rajasthan, death of the employee took place on 15.8.1993. His son aged 19 years, who was adopted on 6.9.1993, after the death of the employee, moved an application for compassionate appointment , which was rejected on 6.4.1998 being not valid according to the order dated 21.9.1997.

(lxi) In Writ Petition No. 9278/02 Chhotu Singh Vs. State and others, father of the petitioner died on 31.12.1995. At that time the petitioner was 15 years of age. He moved an application for compassionate appointment on 16.3.1996.

which was rejected on 15.6.1998 on the ground that it was not applied within 45 days .

(lxii) In Writ Petition No. 2549/03 Vikas Sharma Vs. State of Rajasthan, father of the petitioner died on 6.2.1982. At that time age of the petitioner was 12 years. He applied for compassionate appointment in the year 1993. He joined his duties on 29.1.1994 vide order dated 5.10.1996 on the post of L.D.C. On 23.9.2002 by filing an application, he made a request for higher post.

(lxiii) In Writ Petition No. 3437/04 Smt. Narbada Devi and another Vs. The Director Employment Service Rajasthan, the father of the petitioner was absconding since 1983. At that time the age of petitioner was three years. The petitioner moved an application for compassionate appointment on 22.10.2002. His

application was rejected by the respondents being filed belatedly.

(lxiv). In Writ Petition No. 3608/04 Arjun Singh Vs. Jaipur Vidhyut Vitran Nigam Ltd. and others, the employee died on 24.6.82. Petitioner is the adopted son of the deceased being adopted on 15.3.1982 He filed application on 27.7.1998. The respondents have stated that the deceased was of 23 years of age at the time of death and was unmarriedand Adoption deed has not been placed on record of the Writ Petitoin. He has not placed copy of the adoption deed either with his application or the notice of demand. This petition being misconceived is dismissed.

(lxv) In Writ Petition No. 5874/05 Shyam Singh Shekhawat Vs. State of Rajasthan and others, the father of the petitioner passed away on 2.1.1990. At that time, age of the petitioner

was 19 years. The petitioner moved an application for compassionate appointment on 24.6.1991. He was given appointment on the post of Patwari against the leave vacancy vide order dated 10.4.1990. He made a representation to the respondents to give him the post of Nayab Tehsildar. His representation was rejected on the ground that he has been rightly appointed to the post of Patwari as per his qualification.

(lxvi) In Writ Petition No.6554/05 Rajendra Kumar Vs. R.S.R.T.C., the father of the petitioner passed away on 14.12.1994. At that time the age of petitioner was 9 years. He moved an application for compassionate appointment on 15.7.04. His application was rejected on 7.2.2005 on the ground that it was filed belatedly .

(lxvii) In Writ Petition No. 8696/05,Mayank Sharma Vs. State of Rajasthan, father of the petitioner died on 3.10.1991. At that time the petitioner was of 13 years of age. He filed an application for compassionate appointment on 12.3.1996. Vide letter dated 13.3.1997, he was asked to fill up the forms for Character Verification and medical examination, for consideration of his application for appointment on the post of L.D.C. His application was rejected on 27.5.03 on the ground that he is not eligible to get appointment under the Rules of 1996.

(lxviii) In Writ Petition No. 4934/06, Kapil Dev Vs. R.S.R.T.C. , father of the petitioner died on 20.7.86. At that time petitioner was of four years of age. An application for compassionate appointment was moved by her mother on 16.12.1988 which was rejected on

26.11.05. Again she filed an application on 3.6.2000 for the job of her son, which was rejected as per the Rules of 1996. All other connected petitions where facts are not mentioned contain similar facts and the Law.

The respondents have framed the rules in exercise of the powers under Section 309 of the Constitution of India known as the Rajasthan Recruitment of Dependants of Government Servants dying while in service rules, 1975( for short ` the Rules of 1975'). The rules prescribe recruitment of a member of the family of the deceased.

For claiming appointment, rules 5 and 8 of the Rules are relevant, which read as under:-

> *"5. Recruitment of a member of the family of the deceased:-*
>
> *In case of deceased Government servants, one member of his family which is not already employed under the Central/State Government or Statutory Board/Organizations/*

*Corporations owned or controlled by the Central/State Government shall on making an application for the purpose, be given a suitable employment in Government service without delay only against an existing vacancy, which is not within the purview of the State Public Service Commission, in relaxation of the normal recruitment rules, provided such member fulfills the educational qualifications prescribed for the post and is also otherwise qualified for Government service. In the event of non-availability of a vacancy or any of the members of the family being unqualified or minor, is not found suitable or eligible for immediate employment, then such cases should be considered immediately on the availability of the post or any one of them becomes qualified or eligible for such employment under these Rules."*

*8. Relaxation for age and other requirement:-(1) The candidates seeking appointment under these rule must not be less than 16 years at the time of appointment. In the cases in which the wife of the deceased Government servant being the only candidate found qualified eligible for such employment there shall be no maximum upper age limit.*

*(2) The procedural requirement for selection, such as written test, typing test or interview by a Selection Committee or any other Authority shall be dispensed with, but it shall be open to the Appointing Authority to interview the candidate in order to satisfy that the candidate will be able to maintain the minimum standards of work and efficiency expected on the post or to prescribe any condition, if considered necessary, for acquiring any training or proficiency erg. typing speed or any other qualifications etc. within a reasonable period, after such employment under these rules.*

Rule 5 was amended subsequently. However, amendment for the purpose of these petitions is not relevant. The age of the candidates seeking appointment is 16 years as per Rule 8 of the Rules of 1975.

The petitions filed by the petitioners contained the grievances of rejection of their applications, which are as under:-

(1) mother of the petitioner is in employment;

(2) application has not been filed within time;

(3) deceased served only for 186 days ;

(4) petitioner was adopted after the death;

(5) adoption is against Section 6 read with Section 5 of the Hindu Adoptions and Maintenance Act, 1956( for short the Act of 1956);

(6) engaged as daily wager instead of regular appointment

(7) brother of the petitioner is already in service.

(8) applied for appointment after a period of over ten years.

(9) post is not vacant.

(10)application has been filed beyond 45 days.

(11)application will be considered when the post is available;

(12)in some cases the applications are still pending;

(13)appointed against leave vacancy;

(14)appointed as daily wager and not as a regular employees;

(15)appointed on Lower Post. Should be appointed on higher post, being possessed of higher qualification.

So far as the petitioners, who are claiming compassionate appointment on the ground of adoption, their adoption deed has been questioned by the respondents.

The requisites of a valid adoption is contained in Sections 5 and 10 of the Hindu Adoptions and Maintenance Act,1956 which read as under:-

> **5. Adoptions to be regulated by this Chapter.-**(1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.
>
> (2)An adoption which is void shall neither create any right in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

> **10. Persons who may be adopted.-** No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:-
>
> (i) he or she is a Hindu;
>
> (ii)he or she has not already been adopted
>
> (iii)He or she has not been married,unless there is a custom or usage applicable to the parties which permit persons who are married being taken in adoption;
>
> (iv)he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

The adoptions made after the age of 15 years is void ab initio as per the mandate of Section 10(iv) of the Act of 1956 as the petitioner lacks its requisites.

The Rules of 1975 do not contemplate that if any member of the family of the deceased is

in service he shall not be entitled to be considered for appointment.

Rule 5 of rules 1975 envisages that in the event of non-availability of the vacancy or any of the members of the family being unqualified or minor, is not found suitable or eligible for immediate employment, such case shall be considered immediately on the availability of the post or any one of them becomes qualified or eligible for such appointment under these rules. This rule does not specify any time limit. Rule 8 of 1975 Rules specifies that the seeker of appointment should not be less than 16 years of age. The time limit is only till the availability of the vacancy and the candidate seeking appointment becomes eligible for immediate employment on attaining the age of majority.

There is no stipulation in the rules of 1975 that the petitioner earns a disqualification, if the deceased on whom the petitioner is dependant has served only for a few months or any member of the family is in employment. Consideration can only be delayed if the post is not available and the candidature has to be considered as and when the post is available. There is no reason for keeping the applications pending by the respondents. They should have disposed of the applications within reasonable time.

However, on attaining majority, the petitioner should have immediately filed an application showing that without such appointment he is unable to tide over the sudden financial cries which visited him on the death of the deceased upon whom he was dependent.

The compassionate appointment can not be claimed as a matter of right. However, by framing the rules, another source of recruitment has been created by the respondents. Though a public post can be filled up by providing opportunity to all the eligible candidates as the public employment is a public property, yet after framing of the rules right is vested for consideration of compassionate appointment in the dependant of the deceased, however, of course subject to eligibility and availability of the post. The petitioners who have on attaining the age of majority not applied for the post immediately and tendered any explanation therefor,shows that they are not suffering from such hardship and distress caused on the demise of the earning member of the family. The time for applying against the post for compassionate appointment, if

not,specified in the rules, even then should be reasonable.

Dealing with all these points, the Supreme Court has settled the Law almost on all the issues involved herein.

In case titled **JAGIDSH PRASAD VS. STATE OF BIHAR AND ANOTHER(1996) 1 SUPREME COURT CASES 301,** the dependent was of four years of age at the time of death of his father. He filed an application after a period of 23 years. The Court held as under:-

> "The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four year's old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the

> dependent of a deceased government servant which cannot be encouraged, decors the recruitment rules."

In **UNION OF INDIA AND OTHERS VS. BHAGWAN SINGH** reported in **(1995)6 SUPREME COURT CASES 476**, the deceased left his dependant minor son of 12 years of age, who filed an application on attaining majority in 1980/81, which was rejected by orders dated 21.9.1987, 19.6.1990 and 11.6.1991. The Supreme Court dealing with this situation held that the application has been patently barred observing as under:-

> "It is common ground, that normally all appointments on compassionate ground should be made within a period of five years from the date of occurrence of the event entitling the eligible persons to be appointed. In this case the railway servant died on 12.9.1972. He left behind his wife, two major sons and the respondent, a minor aged 12 years then. The respondent attained majority in 1980/1981 . There is no material on record to show that the respondent applied within 5 years of " the event " or within one year from the date of

> his attaining majority. As early as 21.9.1987 an application filed by the respondent was dismissed. The subsequent applications filed in that behalf were dismissed on 19.6.1990 and 11.6.1991. There is material on record to show that the respondent was aged 33 years at the time of making the application and the last application which was allowed by the Tribunal was one filed nearly 20 years after the death of the railway servant. Patently the application is barred."

In case titled **HARYANA STATE ELECTRICITY BOARD VS.NARESH TANWAR AND ANOTHER** reported in **(1996)8 SUPREME COURT CASES 23**, the dependant sons were minor of the age of 12 and 13 years respectively. After the death of the Govt. Employee in November 1980, the eldest of them having born in 1972, claimed compassionate appointment on attaining majority. Though there was no time limit to file an application for compassionate appointment. Considering

this, the Supreme Court set-aside the judgment of the High Court observing as under:-

> "Compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. The very object of appointment of dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years."

In case tittled **DIRECTOR OF EDUCATION (SECONDARY)AND ANOTHER VS. PUSHPENDRA KUMAR AND OTHERS** reported in **(1998) 5 SUPREME COURT CASES 192**, the petitioner claimed for a particular Class III posts whereas the State offered Class IV Post. The Apex Court held as under:-

"The object underlying a provision for grant of compassionate employment is to enable the family of deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependent of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions of making appointment by following prescribed procedure. It is in the nature of an exception to the general provisions. An exception cannot subsume the main provision and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the

provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee."

It was further observed as under:-

"Having regard to the fact that there are a large number of Class IV posts and appointment on these posts is made by direct recruitment,theobject underlying the provision for giving employment to a dependent of a person employed on teaching/non-teaching staff dying in harness would be achieved if the said provision in the Regulations is construed to mean that in the matter of appointment of a dependent of a teaching/non-teaching staff in a non-government recognized aided institution dying in harness, if a post in Class III is not available in the institution in which the deceased employee was employed or in any other institution in the district, the Dependant would be appointed on a Class IV post in the institution in which the deceased employee was employed and for that purpose a supernumerary post in Class IV may be created. If the Regulations are thus construed, the respondents-applicants could only be appointed on a Class IV post and they could not seek a direction for being appointed on a Class III post and

> for creation of supernumerary post in Class III for that purpose. The direction given by the High Court can not be upheld whereby the respondents have been directed to be appointed on a Class III post if they possess the requisite qualifications for such a post and in case no class III post is available, then a supernumerary Class III post be created for the purpose of such appointment."

In case titled **HARYANA STATE ELECTRICITY BOARD AND KRISHNA DEVI** reported in **2002-VOL II LABOUR LAW JOURNAL** 773, the Supreme Court was dealing with a situation where the application was made by the depandant after a lapse of eight years after the employee's death. The Court held as under:-

> "5. Admittedly, the application was made by the respondent after a lapse of eight years of death of her husband,. At that time there was no rule for such an employment. Subsequently, however, in the year 1985 the appellant Board issued a circular framing scheme for such employment to the dependents of the deceased work charged/daily wage employee. The

> husband of the respondent died in the year 1984 but at that time, the above scheme was not available.
>
> 6. As the application for employment of her son on compassionate ground was made by the respondent after eight years of death of her husband, we are of the opinion that it was not to meet the immediate financial need of the family. The High Court did not consider the position of law and allowed the writ petition relying on an earlier decision of the High Court."

In case titled **KULDEEP KUMAR KASHYAP VS. STATE OF RAJASTHAN AND OTHERS** reported in **2002(5)WLC ( Raj.)145,** the dependent was appointed on the post of L.D.C. but he claimed the post of Inspector. Dealing with this situation, the Court held as under:-

> "Right of option either to accept the lowest post or wait for suitable post is available, goes to show that sudden financial crisis due to the death of the employee is not the criteria for consideration. In the case in hand the petitioner has been given the

appointment on the post of L.D.C. and may be that post would have been vacant. He joined on the post and thus has no right whatsoever to claim another post. In the application ( Annexe-4) though it is stated that he is joining on the post of L.D.C. which will not affect his legal right, but the learned counsel for the petitioner fails to show any legal right of the petitioner to claim another post on availability thereof. Otherwise also no question does arise to give appointment to the petitioner on the post of Commercial Taxes Inspector or Accountant. Once he has accepted this appointment, may be with this reservation, that does not give any enforceable legal right to claim higher post. This claim of the petitioner for appointment on the post of Commercial Taxes Inspector or Motor Vehicles Inspector or Accountant or Excise Inspector is not legally tenable. Instances are given but if any illegality has been committed by the Government, it will not give an enforceable legal right to the petitioner on that basis. The plea of discrimination cannot be based on the basis of illegal action of the Government."

In case titled **STATE OF MANIPUR VS. MD RAJAODIN** reported in **(2003)7 SUPREME COURT CASES 511,** the dependent was minor being 10 years of age at the time of death of his father. He made an application after 17 years on attaining majority. While dealing with the scope of compassionate appointment and the reasonable period within which the dependent should claim the compassionate appointment, the Supreme Court has observed as under;-

> " The Government had issued an office memorandum dated 2-5-1984, dealing with compassionate appointments in which a time period was stipulated within which application could be made. Admittedly, the respondent's father had died before the office memo came into operation and hence the time stipulation as provided in the Scheme would not be strictly applicable. Nevertheless, keeping in view the object for which such compassionate appointments are made, the request for appointment should be made expeditiously. As the appointments of such nature envisaged under the said Scheme are

> made to tide over immediate difficulties, there is an inbuilt requirement of urgency in making the application. The respondent was ten years of age when his father died . Even if reasonable period after he attained majority is taken, the application on 25.7.1997 seeking appointment was highly belated."

In case titled **UMESH KUMAR NAGPAL VS. STATE OF HARYANA AND OTHERS** reported in **(1994) 4 SUPREME COURT CASES 138,** while dealing with the scope of compassionate appointment and the reasonable period within which the dependent should claim the compassionate appointment, the Supreme Court observed as under:-

> "5. It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Class III and IV. It is unnecessary to reiterate that these observations are contrary to law. if the dependent of the deceased employee finds it below his dignity to accept the post offered, he is free not to do

> so. The post is not offered to cater to his status but to see the family through the economic calamity.
>
> 6. For these very reason, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

From the above narration of law it is made out that if an application is filed after a long period to claim compassionate appointment the very purpose and object of compassionate appointment gets frustrated. The reasonable period which has been fixed by the Supreme Court in various judgments as noticed above is that in case any candidate seeks relief on

attaining the age of majority after one year, it shall amount that as if the post is kept reserved for him. The post can not be claimed as a matter of right or as reserved till the petitioner applies for the post. The application should have been filed immediately on attaining the age of majority.

For the aforesaid reasons, the writ petitions are disposed of with the following directions:-

1. That the applications rejected by the respondents on the ground that one of the family member is employed, is contrary to Rule 5 and shall be considered again; however, keeping in view the reasonable time restraint.

2. Where the appointment is sought on the basis of adoption and the said adoption is not within the age of 15 years, it is contrary to

Sections 5 and 10 of the Adoption Act of 1956. These petitions are dismissed.

3. Wherein the petitioners pleaded that there is a custom in their community for adoption beyond 15 years, they are at liberty to prove the custom before the Civil Court. Such petitions are dismissed at this stage.

4. The applications rejected on the ground of being filed belatedly , those petitions are dismissed as the judgments of Supreme Court apply per incurium to the facts of these cases.

5. That the Applications pending with the respondents, should be disposed of within two months .

6. Where the applications have been pending or rejected because of the non-availability of the Posts, the respondents shall consider those applications and pass appropriate orders

within reasonable time of course taking into consideration the time restraint as pointed out in the course of this Judgment .

7. Where the petitioner is seeking to be appointed as L.D.C. on the basis of his qualification and the respondents have engaged him as daily wager, the respondents shall consider him for being appointed against Class IV Post or L.D.C. as the requirement of Law has not been satisfied.

8. The applications rejected on the ground that the deceased employee worked for a few months is not sustainable. The respondents are directed to consider the applications positively and pass appropriate orders.

9. Where the petitioner, being qualified for higher post have applied to be appointed against higher post,such as Naib Tehsildar or Inspector, their compassionate appointment

against lower post is justified. These petitions are dismissed.

(R.C.Gandhi)J.